

**Section 12.1: Serious Deficiency**

As stated in 7 CFR 226.6(c), serious deficiencies are grounds for disapproval of application and for terminating participation. Serious deficiencies include, but are not limited to any of the following:

- Failure to comply with Program requirements.
- Submission of false information to the State Agency (SA)
- Permission of an individual on the National Disqualified List
- Failure to operate program in conformance to performance standards
- Failure to follow Federal procurement regulations
- Invalid Title XX claiming
- Failure to properly train or monitor facilities
- Failure to disburse payments to facilities
- Failure to return advanced payments
- Conviction of institution or principals indicating lack of integrity
- Failure to adjust meal orders to conform with the number of participants
- Claiming meals not served to enrolled participants
- Failure to maintain adequate records to support claims for reimbursement
- Claiming for significant number of meals that do not meet program requirements
- Use of Food Service Management Company (Vendor) that is in violation of health codes
- Failure to perform financial and administrative duties

A sponsor may request for an appeal hearing using the procedures included in the CACFP application packet, if participation was terminated or an application to participate was denied. If an institution is deemed seriously deficient, that determination is not subject to an appeal.

**Section 12.2: Application Denial or Termination of Participation**

Federal regulations [7 CFR 226.6(c)] give the SA the responsibility to terminate any institution, responsible principals, and responsible individuals that has been determined to be seriously deficient in the operation of the CACFP. However, before the SA can terminate an institution, responsible principals, and responsible individuals, it must give the institution, responsible principals, and responsible individuals every reasonable opportunity to correct its deficiencies. Those identified deficiencies must remain permanently corrected. In the event that an institution, responsible principals, and responsible individuals are determined to be seriously deficient in its operation of the CACFP, the SA will provide the institution complete notice, which will include all of the following:

- Identification of the problems that have led to the determination of serious deficiency.
- Steps that the institution must take in order to correct the problems.
- Timeline in which the institution must correct the problems.
- Consequences if the problems are not corrected within the specified timeline.

ADE/H&N shall terminate the Program agreement with any sponsor that does not fully and permanently correct the serious deficiency (Note: institutions are given one opportunity to correct a serious deficiency). ADE/H&N shall notify FNS whenever a sponsor has been terminated for failing to fully and permanently correct serious deficiencies. Once a sponsor has been terminated for failing to fully and permanently correct serious deficiencies, that institution, the responsible principals, and responsible individuals are placed on the national disqualified list for a minimum of seven years or longer, if money is owed. That institution, the responsible principals, and responsible individuals will be ineligible to participate in any Federal child nutrition program until they can demonstrate to FNS that the deficiencies have been permanently corrected.

Pursuant to 7 CFR § 226.6I(3)(A)(6), the voluntary termination by an institution of its agreement with the Arizona Department of Education will still result in the formal termination of that institution, the responsible principals, and responsible individuals by ADE.

Any facility or individual that is identifiable with a seriously deficient facility through its corporate organization, officers, employees, or otherwise, shall also be considered to be ineligible to participate on the Program unless it can demonstrate that good cause exists for considering the facility distinct from the seriously deficient facility to the satisfaction of ADE with the concurrence of FNS. Any sponsor that disagrees with their termination will have the right to request an appeal hearing, as set forth in the appeal procedures included in the CACFP application packet and later in this chapter.

**Section 12.3: Termination by the Sponsoring Organization**

ADE/H&N requires a sponsor who wishes to terminate its participation from the CACFP to submit 30 days advance written notice of its intent to terminate participation including the date of termination. The Sponsoring Organization must terminate its participation for any, but not limited to the following reasons:

- Sale of the center
- Bankruptcy
- Revocation of license
- Unable to meet proprietary Title XX center requirements after three consecutive months

A sponsor that voluntarily chooses to terminate their CACFP agreement may reapply to participate at any time by following the new CACFP application procedures, if voluntary termination was not a result of a serious deficiency.

**Section 12.4: Appeal Procedures**

A sponsor may appeal any action(s) taken by ADE that affect its payment from or participation in the CACFP. Sponsors may appeal findings resulting from Program audits and/or reviews under one or more of the following conditions:

- Denial of application to participate
- Termination of participation
- Suspension of Program agreement
- Denial of all or part of a reimbursement
- Demand for the remittance of an overpayment
- Denial of a request for an upward adjustment to a claim
- Denial by the SA to forward FNS an exception request by the sponsor for payment of a late claim

To request an appeal, refer to the following administrative review procedures (must be maintained on file):

**Child and Adult Care Food Program****Administrative Review Procedures**

The following Child and Adult Care Food Program (CACFP) administrative review procedures include notification, request, and procedure for a hearing in accordance with federal regulation 7 CFR § 226.6(k).

**A. PURPOSE**

The CACFP allows an Institution, responsible principals, and responsible individuals participating in the CACFP an administrative review. This review may be initiated when the Arizona Department of Education (ADE):

1. Denies the Institution's application for program participation (226.6(k)(2)(i)).
2. Denies the sponsor's application for program participation submitted on behalf of a facility (226.6(k)(2)(ii)).
3. Proposes termination of the Institution's agreement (226.6(k)(2)(iii)).
4. Proposes disqualification of a responsible principal or responsible individual (226.6(k)(2)(iv)).
5. Suspends the Institution's agreement (226.6(k)(2)(v)).
6. Denies the Institution's application for start-up or expansion funds (226.6(k)(2)(vi)).
7. Denies the Institution's request for an advance payment (226.6(k)(2)(vii)).

8. Demands recovery of all or part of an advance in excess of the claim for the applicable period (226.6(k)(2)(viii)).
9. Denies all or part of the Institution's claim for reimbursement, provided the Institution has submitted its claim to ADE no later than 60 days after the last day of the claim month (226.6(k)(2)(ix)).
10. Denies the forwarding of an exception request to the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), for a late claim or an upward adjustment of its claim (226.6(k)(2)(x)).
11. Demands that the Institution repay an overpayment (226.6(k)(2)(xi)).

In addition, a participating Institution, responsible principals, and responsible individuals may request a review for any other final action taken by ADE that affects the Institution, responsible principals, or responsible individuals' program participation or the Institution's claim for reimbursement (226.6(k)(2)(xii)).

However, ADE is prohibited from allowing an administrative review on the following actions:

1. FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim (226.6(k)(3)(i)).
2. Determination of serious deficiency (226.6(k)(3)(ii); 226.6(c)).
3. Disqualification and placement on ADE list and National disqualified list (226.6(k)(3)(iii)).
4. Termination of Institution's agreement (226.6(k)(3)(iv)).

## B. PROCEDURE

Notification, request, and procedure for hearing:

1. Whenever ADE takes action that is subject to administrative review as described in (A) above, ADE will notify the Institution, responsible principals, and responsible individuals in writing of the action and the basis for the action, and advise the Institution, responsible principals, and responsible individuals of the right to an administrative review (226.6(k)(5)(i)).
2. A written request for administrative review must be submitted to ADE no later than 15 calendar days from the date the Institution, responsible principals, or responsible individuals receive ADE's notice of action taken. The original and one copy of the review request must be sent to:  
  
Deputy Associate Superintendent, Health and Nutrition  
Arizona Department of Education  
1535 West Jefferson Street, Bin 7  
Phoenix, Arizona 85007
3. ADE shall acknowledge receipt of the request for review within ten calendar days after receipt (226.6(k)(5)(ii)).

4. The Institution, responsible principals, and responsible individuals may retain legal counsel or may be represented by another person (226.6(k)(5)(iii)).
5. Any information on which ADE action was based will be available to the Institution, responsible principals, and responsible individuals for inspection from the date of receipt of the request for review (226.6(k)(5)(iv)).
6. The Institution, responsible principals, and responsible individuals may refute the findings in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted not later than 30 days after receipt by the Institution, responsible principals, and responsible individuals of the notice of action. Written documentation must clearly identify the ADE action being reviewed and must include a photocopy of the notice of action issued by ADE (226.6(k)(5)(v)).
7. The administrative review official shall be independent and impartial, but may be an employee of ADE, although he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review. The Institution, responsible principals, and responsible individuals are permitted to contact the administrative official directly if so desired (226.6(k)(5)(vii)).
8. The administrative review official will hold a hearing in addition to or instead of a review of written information only if the Institution, responsible principals, or responsible individuals request a hearing in the written request for administrative review. Failure to appear at a scheduled hearing will constitute the Institution, responsible principals, or responsible individuals' waiver of the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of ADE must be allowed to attend the hearing to respond to the testimony presented by the Institution and to answer questions posed by the administrative review official (226.6(k)(5)(vi)).
9. If a hearing is requested, the Institution, responsible principals, and responsible individuals and ADE must be provided with at least 10 calendar days advance notice of the time and place of the hearing (226.6(k)(5)(vi)).
10. The administrative review official must make a determination based solely on information provided by ADE, the Institution, responsible principals, and responsible individuals, and based on federal and state laws, regulations, policies, and procedures governing the program (226.6(k)(5)(viii)).
11. Within 60 days from the date ADE receives a request for an administrative review, the administrative review official must inform ADE and the Institution, responsible principals, and responsible individuals of the administrative review's outcome. This timeframe may not be used as a basis for overturning ADE's action if a decision is not made within the specified time (226.6(k)(5)(x)).
12. ADE's action will remain in effect during the administrative review (226.6(k)(10)).
13. The determination by the state review official is the final administrative determination to be afforded the Institution (226.6(k)(5)(x)).

Federal Regulations provide for an abbreviated administrative review under certain circumstances (7 CFR § 226.6(k)(9)). ADE must limit the administrative review to a review of written submissions concerning the accuracy of ADE's determination if the application was denied or ADE proposes to terminate the institution's agreement because:

1. The information submitted on the application was false.
2. The institution, one of its sponsored facility, or one of the principals of the institution or its facilities is on the national disqualified list.
3. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program.
4. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

The above administrative review procedures are condensed from 7 CFR § 226.6(k). The Code of Federal Regulations should be consulted for additional rules regarding the review process.

If you have any questions regarding these procedures, please contact Health and Nutrition Services at 602.542.8700.